IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1662 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

S C GANGDIWALA

Versus

DIST COLLECTOR

Appearance:

MR PC MASTER for Petitioner

RULE SERVED for Respondent No. 1

MS PB SHETH for Respondent No. 2

MR VIJAY H PATEL for Respondent No. 3

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 02/03/2001

ORAL JUDGEMENT

1. The petitioner challenges the order of the Collector dated 16-2-1990 at Annexure `D' to the petition, by which the resolution of the Municipality appointing the petitioner as an auditor on 28-2-1989 and the office order dated 28-2-1989 issued by the Chief Officer pursuant thereto, were set aside by the Collector.

2. In the petition, it has been alleged that the Collector did not hear the petitioner who was directly affected by his order. The Collector did not pay any heed and maintained his earlier directions, despite a review application on this ground.

3. Admittedly, the petitioner was not heard before the resolution of the Municipality appointing him as an auditor was set at naught by the Collector under the impugned order in purported exercise of powers under section 258 of the Gujarat Municipality Act. It is settled legal position [See H.H.Parmar v. Collector, Rajkot, reported in Vol. XX (2) GLR 97] that it is absolutely necessary for the Collector to give a reasonable opportunity of hearing to a person who was affected by his order. It was held that if an order of appointment is issued and the appointee has taken charge of his office under the resolution, a right accrued to the appointee to hold that office. Whether that right had lawfully accrued to him or not, cannot be decided against him unless he was heard. It was therefore necessary for the Collector before taking action under section 258 of the Act to issue notice to such employee giving him a reasonable opportunity of being heard before making an adverse order.

4. In this view of the matter, the impugned order of the Collector dated 16-2-1990 at Annexure `D' to the petition cannot be sustained and is hereby set aside. Rule is made absolute accordingly with no orders as to costs.

MARCH 02, 2001 [R.K.ABICHANDANI, J.]

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